

BRB Nos. 03-0527 BLA
and 03-0527 BLA-A

BEULAH ARRINGTON)
(Widow of BOBBIE ARRINGTON))

Claimant-Petitioner)
Cross-Respondent)

v.)

DOUBLE D ENTERPRISES,)
INCORPORATED)

DATE ISSUED: 04/22/2004

and)

SUN COAL COMPANY,)
INCORPORATED)

Employer/Carrier-)
Respondents)
Cross-Petitioner)

DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS,)
UNITED STATES DEPARTMENT)
OF LABOR)

Party-in-Interest)

DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Pamela Lakes
Wood, Administrative Law Judge, United States Department of Labor.

Vincent J. Carroll, Richlands, Virginia, for claimant.

Ron Gilbertson (Bell, Boyd & Lloyd PLLC), Washington, D.C., for
employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and
HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals and employer cross-appeals the Decision and Order Denying Benefits (2001-BLA-00841) of Administrative Law Judge Pamela Lakes Wood on a survivor's claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act).¹ Based on the date of filing, the administrative law judge adjudicated this claim pursuant to 20 C.F.R Part 718.² The administrative law judge credited the miner with at least ten years of coal mine employment after noting that collateral estoppel did not preclude employer from contesting the issues of length of coal mine employment or the existence of pneumoconiosis. On the merits, the administrative law judge found that the evidence was insufficient to establish death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c) and, moreover, that the evidence of record as a whole preponderates against a finding of the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). Accordingly, benefits were denied. On appeal, claimant contends that the administrative law judge erred in her weighing of the medical opinion evidence relevant to the cause of the miner's death pursuant to 20 C.F.R. §718.205(c) and erred in finding that the miner did not suffer from pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Claimant also argues that collateral estoppel should have precluded employer from contesting the issue of the existence of pneumoconiosis. Employer responds to claimant's appeal and urges affirmance of the denial of benefits. On cross-appeal, employer challenges the administrative law judge's findings with respect to the issues of the length of coal mine employment and the responsible operator. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.

¹ The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725, and 726. All citations to the regulations, unless otherwise noted, refer to the amended regulations.

² The administrative law judge noted that the record indicates that the miner, Bobbie Arrington, filed an application for black lung benefits on April 6, 1989. Decision and Order at 2. This claim had a lengthy procedural history and was on remand to the district director when the miner died. Decision and Order at 2-3. The miner died on May 2, 1997, and claimant, Beulah Arrington, the miner's widow, filed a claim for survivor's benefits on May 29, 1997. Decision and Order at 3, Director's Exhibits 1, 2, 8. The district director awarded benefits and administratively closed the miner's claim on May 14, 2001, and that claim is not at issue herein. Decision and Order at 3; Director's Exhibit 120.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To establish entitlement to survivor's benefits pursuant to 20 C.F.R. §718.205(c), claimant must demonstrate by a preponderance of the evidence that the miner had pneumoconiosis arising out of coal mine employment and that his death was due to pneumoconiosis. See 20 C.F.R. §§718.201, 718.202, 718.203, 718.205(a)(1)-(3); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). For survivor's claims filed on or after January 1, 1982, death will be considered due to pneumoconiosis if the evidence establishes that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, death was caused by complications of pneumoconiosis, or the presumption, relating to complicated pneumoconiosis, set forth at 20 C.F.R. §718.304, is applicable. 20 C.F.R. §718.205(c)(1)-(3). Pneumoconiosis is a substantially contributing cause of a miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993). Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and contains no reversible error. The administrative law judge found that the preponderance of the more probative medical opinion evidence failed to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). The administrative law judge noted that Dr. Moore, the miner's treating physician, listed pneumoconiosis as a contributing cause on the death certificate and in the miner's final diagnosis from his last hospitalization. Decision and Order at 9, 13; Director's Exhibits 8, 10-11. The administrative law judge found that Drs. Fino and Castle determined that the miner's death was due to smoking-related lung disease. Decision and Order at 10, 13-14.

Although Dr. Moore opined that the miner's death was contributed to by pneumoconiosis, the administrative law judge rationally found that since Dr. Moore's conclusion was not well-reasoned or well-documented, it failed to establish death due to pneumoconiosis. *Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 22 BLR 2-251 (4th Cir. 2000). Contrary to claimant's assertion, the administrative law judge was not required to give determinative weight to Dr. Moore's opinion on the basis that he was a treating physician and acted within her discretion in according diminished weight to the opinion of Dr. Moore regarding the cause of the miner's death because she found the

physician did not provide an explanation for his diagnosis. See *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984); Decision and Order at 13.

It is within the administrative law judge's discretion, as the trier-of-fact, to determine the weight and credibility to be accorded the medical experts, see *Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986); *Sisak v. Helen Mining Co.*, 7 BLR 1-178, 1-181 (1984), and to assess the evidence of record and draw his own conclusions and inferences from it, see *Maddaleni v. The Pittsburg & Midway Coal Mining Co.*, 14 BLR 1-135 (1990); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). In this case, the administrative law judge considered all of the relevant evidence and, in according diminished weight to Dr. Moore's opinion, and in crediting the opinions of Drs. Fino and Castle, rationally concluded that pneumoconiosis was not a contributing cause of the miner's death. Decision and Order at 6; *Shuff*, 967 F.2d 977, 16 BLR 2-90. Consequently, we affirm the administrative law judge's finding that the medical opinions of record failed to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). *Lane v. Union Carbide Corp.*, 105 F.3d 166, 21 BLR 2-34 (4th Cir. 1997); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Because claimant has not met her burden of proof on an essential element of entitlement in this survivor's claim, we must affirm the denial of benefits and we need not address the administrative law judge's findings under Section 718.202(a) or employer's contentions on cross-appeal. 20 C.F.R. §718.205(c); see *Shuff*, 967 F.2d 977, 16 BLR 2-90; *Clark*, 12 BLR 1-149; *Trent*, 11 BLR 1-26; *Trumbo*, 17 BLR 1-85; *Neeley*, 11 BLR 1-85.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge